

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

K.C. HOPPS, LTD.,)	
)	
Plaintiff,)	CASE NO. 4:20-CV-437
)	
vs.)	
)	
THE CINCINNATI INSURANCE)	
COMPANY,)	
)	
Defendant.)	

DEFENDANT'S ADDITIONAL PROPOSED JURY INSTRUCTIONS

WALLACE SAUNDERS

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to:

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INSTRUCTION NO. ____ (D's instruction No. 28.)

(CONTRACT TERMS)

In order for physical contamination to be physical loss to property, the property must be rendered uninhabitable.

Port Auth. of New York & New Jersey v. Affiliated FM Ins. Co., 311 F.3d 226 (3d Cir. 2002);
W. Fire Ins. Co. v. First Presbyterian Church, 165 Colo. 34, 35, 437 P.2d 52 (1968);
The Insurance Policy;
Pattern Inst. Kan. Civil 106.1;
Mo. Approved Jury Instr. (Civil) 4.01 (8th ed.); and
Mo. Approved Jury Instr. (Civil) 31.09 (8th ed.).

INSTRUCTION NO. _____ (Defendant's Instruction No. 6A)

(VERDICT DIRECTOR – BREACH OF CONTRACT (CONVERSE))

Your verdict must be for defendant unless you believe:

First, Defendant issued to Plaintiff a commercial property insurance policy bearing Policy No. EPP 012 40 51 / EBA 012 40 51, for the coverage period from January 25, 2020, through January 25, 2023.

Second, the policy was in force on the date of any direct physical loss or direct physical damage to property at one or more of Plaintiff's premises.

Third, Plaintiff suffered direct physical loss or direct physical damage to property at one or more of the premises involved here, caused by SARS-CoV-2.

Fourth, Plaintiff suffered actual loss of Business Income due to the necessary "suspension" of Plaintiff's operations during a period of restoration;

Fifth, The "suspension" was caused by direct physical loss or direct physical damage to property at "premises" which are described in the Declarations and for which a "Business Income" Limit of Insurance is shown in the Declarations: and

Sixth, Defendant was in breach of contract by refusing coverage.

This proposed instruction is [is not] agreed upon by the parties.

Oral Surgeons, P.C. v. Cincinnati Ins. Co., 2 F.4th 1141, 1144 (8th Cir. 2021);
Santo's Italian Café LLC v. Acuity Ins. Co., No. 21-3068, 2021 U.S. App. LEXIS 28720, at *10 (6th Cir. Sep. 22, 2021);
Promotional Headwear Int'l v. Cincinnati Ins. Co., 504 F. Supp. 3d 1191, 1203 (D. Kan. 2020);
Mo. Approved Jury Instr. (Civil) 31.09 (8th ed);
The insurance policy; and
P.I.K.4t 124.01A.